

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

MICHAEL WILLIAMS	)	CASE NO. 1: 14 CV 468
	)	
Petitioner,	)	JUDGE DONALD C. NUGENT
	)	
v.	)	<u>MEMORANDUM OPINION</u>
	)	<u>AND ORDER</u>
KEITH SMITH, Warden,	)	
	)	
Respondent.	)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Kathleen B. Burke, addressing Petitioner's request for a writ of habeas corpus. (ECF #10). Respondent timely filed objections to the Report and Recommendation. (ECF # 11). The Court has reviewed *de novo* those portions of the Magistrate Judge's Report and Recommendation to which objection has been made. *See* FED. R. CIV. P. 72(b).

Magistrate Burke found that the habeas corpus action brought by Mr. Williams pursuant to 28 U.S.C. § 2254 included unexhausted claims and should be considered a mixed petition under the case law. Magistrate Burke's Report and Recommendation also found that Mr. Williams provided no argument that would support the issuance of a stay in lieu of dismissal under the circumstances. The Court agrees with these specific findings, but declines to adopt the Report and Recommendation (ECF #10) as written. All parties agree that Petitioner's

third claim has not been exhausted. Further as set forth in Respondent's Objections, it appears that there may also remain unexhausted issues under claim two of the petition. Pursuant to 28 U.S.C. § 2254(b)(1), (c), a Court shall not consider an application for writ of habeus corpus when the applicant has not exhausted all available state court remedies.

As indicated in the Report and Recommendation, when a petitioner fails to exhaust available state remedies, the entire petition may be dismissed without prejudice, or under certain limited circumstances, a court may grant a stay to allow petitioner to exhaust state court remedies. (ECF #10, at 7, citing *Rhines v. Weber*, 544 U.S. 269, 277 (2005)). A "stay and abeyance is only appropriate when the district court determines there was good cause for the petitioner's failure to exhaust his claims first in state court." *Id.* As set forth above, the Court adopts Magistrate Burkes' finding that Petition has set forth no argument to support the issuance of a stay. There were no objections to this portion of the Report and Recommendation.

Therefore, as the Petition at issue includes unexhausted claims, and as there has been no showing or argument made by Petitioner that is sufficient to support the issuance of a stay, the Court hereby dismisses the Petition without prejudice. IT IS SO ORDERED.

/s/ Donald C. Nugent  
DONALD C. NUGENT  
United States District Judge

DATED: January 9, 2015